

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.289 of 1999

Judgment reserved on:14.3.2006

Date of decision: 27.03.2006

State of Himachal Pradesh	Appellants
Versus	
Joginder Singh	Respondent
Coram:	
The Hon'ble Mr. Justice Deepak Gupta, J.	
Whether approved for reporting ? YES	
For the appellant(s):Mr.J.S.Guleria, Law Officer	
For the respondent(s): Mr.N.K.Thakur,Advocate	
<u>Deepak Gupta,J.</u>	

This appeal by the State is directed against the judgment of the learned Sessions Judge, Una in Criminal Appeal No. 6/1997, decided on 4.5.1999 whereby he has set aside the conviction of the respondent-accused under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act). The trial court had sentenced the respondent to undergo imprisonment for three years and to pay a fine of Rs.500/-.

The prosecution case in brief was that the Food Inspector apprehended the respondent when he was on his way to sell milk. The Food Inspector purchased 700 ml. of mixed milk from the respondent on payment of Rs.5/- only. The sample was divided into

three equal parts and was sent for analysis after following the due procedure. The sample failed on account of the fact that the milk solids not fat were found to be 7.5% against the minimum prescribed standard of 8.5%. The prosecution was launched after obtaining sanction from the C.M.O., Una.

The prosecution examined three witnesses, i.e. Food Inspector, one independent witness and one official from the office of the C.M.O., Una to prove its case. The respondent also produced one witness in defence to show that he was not selling the milk and that the milk was only being taken to the Gurudwara.

The learned trial court on the basis of the evidence led before it convicted the accused of the offence as aforesaid and sentenced him to undergo imprisonment for three months and to pay fine of Rs.500/-. In default of payment of fine he was to undergo simple imprisonment for one month. The respondent filed an appeal before the learned Sessions Judge, Una who allowed the same. The appeal has been allowed on two short grounds; firstly that the sanction was accorded by the C.M.O., Una in a mechanical manner without application of mind and was no sanction in the eyes of law and secondly that the milk was not made homogeneous before the samples were taken.

As far as the first point is concerned, it would be pertinent to refer to the sanction order which has been proved on record as Ex.P-11. PW-3 Pawan Kumar who is from the office of the Health Authority has clearly stated that after the receipt of the report of the Public Analyst the entire papers were placed before the C.M.O., Una for according sanction. After perusing the entire papers the C.M.O. had written “seen” and accorded sanction on Ex.P-11. This witness states that the C.M.O. had signed the same in his presence. In cross examination he has admitted that Ex.P-11 is not in the hands of the C.M.O., but was placed before him with the other documents for his signatures.

A perusal of Ex.P-11 indicates that the C.M.O. has gone through the entire documents and has applied his mind and then accorded the sanction.

Mr.J.S.Guleria, Law Officer, submits that the learned Sessions Judge erred in holding that since the word ‘seen’ was written before the signatures of the C.M.O. it could be presumed that he had not applied his mind, but only after seeking the same he had signed the document. On the other hand, Mr.N.K.Thakur, learned counsel for the respondent, has supported the judgment of the learned lower appellate court.

The apex court in **Suresh H.Rajput etc. Vs. Bhartiben Pravinbhai Soni and others etc. AIR 1996 SC 2883** held as follows:-

“12. It is seen that the analysis report which was placed before the local (Health) authority and the other pertinent material in connection therewith have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents.

13. Considered from this perspective, we hold that the learned Magistrate was not right in law in holding that the sanction granted under Section 20(1) is not valid in law.”

This view has been followed by this court in **State of H.P. Vs. Madan Lal 2000 (2) SLC 438.** A perusal of the sanction order Ex.P-11 which has been properly proved and placed on record shows that the sanction was accorded by the sanctioning authority i.e. the C.M.O., Una after going through the report of the public analyst and all other relevant documents pertaining to this case. The sanctioning authority came to the conclusion that it was a fit case for grant of sanction. In my view the learned Sessions Judge clearly erred in not following the law laid down by the apex court as far as the sanction is concerned. The sanction accorded was proper and suffered from no defect.

However, with regard to the milk being made homogeneous the prosecution, in my opinion, has failed to prove its case. It is well settled law that before the Food Inspector takes a sample for the purpose of analysis he should ensure that the sample is a proper representative of the entire milk. For doing so, the milk must be stirred and made homogeneous. In the present case the Food Inspector in his examination in chief did not even state a single word as to whether he had made the milk homogeneous or not. An ill advised suggestion was made to this witness in cross examination that he had not properly shaken the milk before taking the sample. In fact there was no need to make this suggestion. Obviously, the Food Inspector denied the suggestion. However, this also does not prove that the milk was made homogeneous. Merely shaking the milk will not make it homogeneous. As per the case of the prosecution itself there was 20 kg. Milk being carried by the accused. Such a large quantity could not have been made homogeneous merely by shaking it. It had to be properly stirred with a rod or a ladle. There is no evidence to show that this was done in the present case. In fact PW-2 Vinod Kumar, who was an eye witness, has also not supported the prosecution case. According to him when he reached the spot the sample had already been taken by the Food Inspector. It is no doubt true that there is no rule of law that conviction

under the Act cannot be based on the sole testimony of the Food Inspector. The apex Court in **Prem Ballab and another Vs. The State (Delhi Admn.) 1977 SC 56** has clearly held as follows:-

“There is no rule of law that conviction cannot be based on the sole testimony of a Food Inspector. It is only out of a sense of caution that the courts insist that the testimony of a Food Inspector should be corroborated by some independent witness. This is a necessary caution which has to be borne in mind because the Food Inspector may in a sense be regarded as an interested witness, but this caution is a rule of prudence and not a rule of law; if it were otherwise, it would be possible for any guilty person to escape punishment by resorting to the device of bribing panch witnesses.”

However, in the present case even the statement of Food Inspector does not satisfy the conscience of this court and it does not reveal that the sample was made homogeneous.

In Food Inspector, Municipal Corporation, Baroda Vs. Madanlal Ramlal Sharma and another, (1983) 1 SCC 135, it was found that proper churning of the sample of the curd was not done. In this context, Their Lordships observed :

“.....We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has prescribed content, the sample must be homogeneous and representative so that the analysis can furnish reliable proof of nature and content of the article of

food under analysis. For this purpose churning is one of the methods of making the sample homogeneous and representative. But having said this, there is nothing in the Act or the rules which prescribes that churning must be done by some instrument, and that churning done by hand would not provide a homogeneous and representative sample. Common sense dictates that articles of food like milk and curd when churned with hand would properly mix up from top to bottom.

It is thus apparent that the Food Inspector is duty bound to ensure that the sample he takes is a representative and homogeneous sample of the entire milk preparation and such a sample can only be taken after proper churning or stirring of the entire contents. The evidence in the present case is totally lacking in this behalf. Even if the suggestion which the Food Inspector has denied is taken into consideration all that it shows is that he shook the vessel containing the milk. This would not amount to stirring or churning the milk. Therefore, the sample taken by the Food Inspector by no stretch of imagination can be said to be homogeneous or of representative character. Therefore, the acquittal of the accused on this ground is justified.

In view of the above discussion the appeal is dismissed. The bail bonds of the accused-respondent are discharged.

March 27, 2006(K)

(Deepak Gupta), Judge